

Dusty - (Bankruptcy)
Lodged - (ED MO)
August 22, 2003
Epaberry

IN THE UNITED STATES BANKRUPTCY COURT
THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN THE MATTER OF

STOODY COMPANY,

Debtor.

Chapter 11

No. 01-52847-399

SETTLEMENT AGREEMENT

WHEREAS, on or about November 19, 2001, the Debtor herein filed a petition for reorganization under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, et seq., as amended (the "Bankruptcy Code");

WHEREAS on November 26, 2001, this case was consolidated with other associated cases numbered 01-52840 through 01-52860, pursuant to an Order for Joint Administration;

WHEREAS, on or about May 17, 2002, the United States, on behalf of the Environmental Protection Agency (the "EPA"), filed a Proof of Claim against Stooddy Company (the "Debtor");

WHEREAS, the proof of claim (No. 2354) asserts a claim relating to the obligations and liabilities of the Debtor pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., for at least \$16 million in unreimbursed environmental

response costs incurred by the United States at the Puente Valley Operable Unit of the San Gabriel Valley Superfund Site, Area 4, located in Los Angeles County, California (the "Site"), and for response costs to be incurred in the future by the United States at the Site estimated at the time of filing of the Proof of Claim to be at least \$34 million (the "EPA Claim");

WHEREAS the Debtor seeks, to the maximum extent permitted by law, to obtain protection, through the resolution of CERCLA environmental liabilities for the Site as set forth herein, from and against all claims that have been or may in the future be asserted for response costs for this Site related to releases which occurred prior to the date upon which the United States executes this Settlement Agreement;

WHEREAS, the Proof of Claim against Debtor Stood Company was asserted as a general unsecured claim;

WHEREAS, a Motion to Estimate the EPA Claim was filed on February 28, 2003;

WHEREAS, the parties hereto, without admission of liability by any party, desire to settle, compromise, and resolve the EPA Claim;

WHEREAS, the parties believe that the settlement of matters governed by this Settlement Agreement is in the public interest and is an appropriate means of resolving these matters;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration receipt of which is hereby acknowledged;

IT IS HEREBY STIPULATED and agreed to by and between the parties hereto, subject to approval by the Bankruptcy Court as follows:

1. This Court has jurisdiction over the subject matter herein pursuant to 28 U.S.C. §§ 157, 1331, and 1334, and 42 U.S.C. §§ 9607 and 9613(b).

2. This Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the United States, the Debtor, the Debtor's legal successors and assigns, and any trustee, examiner, or receiver appointed in the Bankruptcy cases, except as is otherwise set forth or reserved herein;

3. The EPA Claim shall be allowed as an Unsecured Claim in the amount of \$413,540 and paid as an Allowed General Unsecured Claim without discrimination in accordance with the terms of the Debtor's Plan of Reorganization, dated April 3, 2003. The United States will be deemed to have withdrawn the EPA Claim for any amount in excess of \$413,540.

4. Payment on the EPA Claim shall be made by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing CERCLA DOJ Number 90-11-2-354/9 and U.S.A.O. File No. ____, in accordance with

instructions provided by the United States to the Debtor after execution of this Settlement Agreement. Any EFTs received at the U.S. DOJ lockbox bank after 11:00 A.M. (Eastern Time) will be credited on the next business day.

The payment to the United States shall be deposited in the "San Gabriel Valley Superfund Sites, Area 4, Special Account" within the EPA Hazardous Substance Superfund. This Special Account shall be retained and used to conduct or finance response actions at or in connection with the Site or the San Gabriel Valley Superfund Sites (Areas 1- 4), or may be transferred by the EPA from this Special Account to the EPA Hazardous Substance Superfund.

5. The payment set forth in paragraphs 3 and 4 above, will be deemed allocated towards past, present, and future claims with respect to response actions and response costs for the Site, whether known or unknown, related to releases which occurred prior to the date upon which the United States executes this Settlement Agreement, for which such a claim could be asserted against the Debtor by the United States or by any potentially responsible parties which have incurred or may incur such costs at the Site, pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, or pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973.

6. Only the amount of cash received by EPA (or net cash received by EPA on account of any non-cash distributions) from the Debtor under this Settlement Agreement for EPA's allowed Unsecured Claim, and not the total amount of the allowed claim, shall be credited by EPA to its account for the Site, which credit shall reduce the liability of non-settling potentially responsible parties to EPA for the Site by the amount of the credit.

7. In consideration of the payment or distribution that will be made by the Debtor to the United States under the terms of this Settlement Agreement, and except as provided in paragraph 8, the United States covenants not to bring a civil action or take administrative action against the Debtor pursuant to CERCLA Sections 106 and 107(a), 42 U.S.C. §§ 9606 and 9607(a), or pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973 with respect to releases at the Site which occurred prior to the date upon which the United States executes this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by the Debtor of its obligations under this Settlement Agreement. This covenant not to sue extends only to the Debtor, and also shall be applicable to Debtor's legal successors and assigns, officers, directors, employees, and trustees, but only to the extent that the alleged liability of those legal successors or assigns, officers, directors,

employees, or trustees of Debtor is based solely upon their status as, and in their capacity as, legal successors or assigns, officers, directors, employees, or trustees of the Debtor. This covenant not to sue does not extend to any other person, entity, or debtor, except as specifically set forth in this paragraph, and in no way limits the reservation of rights by the United States set forth in paragraph 8, below.

8. The covenant not to sue set forth in paragraph 7 does not pertain to any matters other than those expressly specified in paragraph 7. The United States reserves, and this Settlement Agreement is without prejudice to, all rights against the Debtor with respect to all other matters, and specifically with respect to: liability for damages for injury to, destruction of, or loss of natural resources and for the costs of any natural resource damage assessment; liability arising from the disposal, release, or threat of release of a hazardous substance, pollutant, or contaminant at the Site after the date upon which the United States executes this Settlement Agreement; criminal liability; claims for any site other than this Site; and claims based on a failure by the Debtor to meet any requirement of this Settlement Agreement.

9. The Debtor covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to this Site, including but not limited to: any

direct or indirect claim for reimbursement from the Hazardous Substance Superfund, any claims for contribution against the United States, its departments, agencies or instrumentalities, and any claims arising out of response activities at the Site. Nothing in this Settlement Agreement shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

10. With regard to claims for contribution against the Debtor, the Debtor is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for "matters addressed" herein. "Matters addressed" within this Settlement Agreement are response actions taken and to be taken and response costs incurred and to be incurred by the United States or any other person at the Site with respect to releases which occurred at the Site prior to the date upon which the United States executes this Settlement Agreement. "Matters addressed" do not include liability of the Debtor arising from the disposal, release, or threat of release of a hazardous substance, pollutant, or contaminant at the Site after the date upon which the United States executes this Settlement Agreement.

11. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action

to, any person not a party to this Settlement Agreement. The United States and the Debtor expressly reserve all claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or in equity, which the United States or the Debtor may have against all other persons, firms, corporations, entities, or predecessors of the Debtor for any matter arising at or relating to the Site.

12. This Settlement Agreement in no way impairs the scope and effect of the Debtor's discharge under Section 1141 of the Bankruptcy Code as to any third parties or as to any claims that are not addressed herein.

13. Debtor's entry into this Settlement Agreement will be subject to Bankruptcy Court approval pursuant to Bankruptcy Rule 9019. Debtor agrees to exercise its best efforts to obtain the approval of the Bankruptcy Court. This Settlement Agreement also will be lodged with the Bankruptcy Court and submitted for public comment following notice of the Settlement Agreement in the Federal Register. The United States reserves the right to withdraw or withhold its consent if the public comments regarding the Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is inappropriate, improper, or inadequate.

14. If this Settlement Agreement is not authorized and approved by the Bankruptcy Court, this Settlement Agreement shall

be of no force and effect, whereupon nothing herein shall be deemed an admission of any fact or waiver of any right of either party with respect to the matters contained herein.

15. This Settlement Agreement represents the complete agreement of the parties hereto on the matters referred to herein and supersedes all prior agreements, understandings, promises and representations made by the parties hereto concerning the subject matter hereof. This Settlement Agreement may not be amended, modified or supplemented, in whole or in part, without the prior written consent of the parties hereto and the approval of the Bankruptcy Court.

FOR THE UNITED STATES OF AMERICA

Date

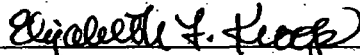
8/20/03



THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

Date

August 21, 2003



ELIZABETH F. KROOK
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Telephone: 202/514-5244
Facsimile: 202/514-2583

Date

7/11/2003

Elizabeth H. Olanfor Kpakata

KEITH TAKATA

Director, Superfund Division

U.S. EPA, Region IX

Date

7/11/03

Dustin Minor

DUSTIN F. MINOR

(by Elizabeth F. Koep)
Assistant Regional Counsel

U.S. EPA, Region IX

FOR DEFENDANT/DEBTOR, STOODY COMPANY

Date July-1-2003



Patricia S. Williams
Vice President, General Counsel, and
Corporate Secretary of Stody Company
16052 Swingley Ridge Road
Chesterfield, Missouri 63107
Telephone: 636-728-3133
Facsimile: 636-728-3011

CERTIFICATE OF SERVICE

This is to certify that on the 21st day of August 2003, I caused to be deposited in the United States mail, first class and postage prepaid, a copy of the United States' Notice of Lodging of Settlement Agreement, the Settlement Agreement, and the Certificate of Service addressed to:

John S. Meyer, Jr., Esq.
Steven J. Poplawski, Esq.
Jennifer Merlo, Esq.
Bryan Cave LLP
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, MO 63102-2750

Patricia S. Williams
Vice President, General Counsel, and
Corporate Secretary of Stoodly
16052 Swingley Ridge Road
Chesterfield, Missouri 63107

Elizabeth A. Kropf